**PP**

**v.**

**CHAI MEI LIAN**

COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF JCA
SULONG MATJERAIE JCA
AHMAD MA'AROP JCA
[CRIMINAL APPEAL NO: Q-09-29-2006]
8 OCTOBER 2009

***CRIMINAL PROCEDURE:*** *Jurisdiction of court - Magistrate's Court - First Class Magistrate - Whether competent to hear offences under Customs Act 1967 - Section 111, Subordinate Courts Act 1948 - Phrase "Reference to Magistrate's Court to be substituted with reference to Sessions Court" - Whether applicable as to render hearing before Magistrate a nullity - Customs Act 1967, ss. 118, 135(1)(d) - Subordinate Courts Act 1948, s. 111*

***STATUTORY INTERPRETATION:*** *Construction of statutes - Legislative intent - Jurisdiction of First Class Magistrate - Section 118 Customs Act 1967 - Whether conferring jurisdiction on First Class Magistrate to hear offences under Customs Act 1967 - Whether caught by provisions of s. 111 Subordinate Courts Act 1948*

The respondent was charged in the (First Class) Magistrate's Court, Kuching, Sarawak for an offence under s. 135(1)(d) of the Customs Act 1967, and upon conviction was sentenced to a fine of RM10,000 in default to five months' imprisonment. On appeal, the learned Judicial Commissioner, without adverting to the merits of the appeal, took the liberty to deliberate on the authorities of *Shim Tshun Fatt v. PP* ('*Shim*'s case') and *A Juvenile v. PP ('A Juvenile')*, and, adopting the ratio in the former, ruled that the trial was a nullity because the learned Magistrate had no jurisdiction to hear the case by virtue of the phrase "any reference to the Court of a Magistrate of the First Class or a District Court shall be substituted with a reference to a Sessions Court …" appearing in s. 111 of the Subordinate Courts Act 1948 (extended to Sarawak on 1 June 1981). The learned Judicial Commissioner, hence, set aside the conviction and sentence and ordered for the fine paid to be refunded. The facts however showed that, as of 1 July 1978, s. 118

of the Customs Act 1967 ('Customs Act') had been amended by the legislature, with the result that, whereas the old version accorded jurisdiction to try offences under the Customs Act to "a Sessions Court in the State of Malaya or a Court of Magistrate of the First Class of Sabah and Sarawak" – the new s. 118 deleted altogether the phrase "a Sessions Court in the State of Malaya or a Court of Magistrate of the First Class of Sabah and Sarawak …" and replaced it with the phrase "a court of Magistrate of the First Class …". This being the case, in this appeal by the Public Prosecutor, a question arose as to whether the amended version of s. 118 of the Customs Act aforesaid was or was not caught by the provision of s. 111 of the Subordinate Courts Act 1948 ('Subordinate Courts Act') – or, put differently – whether a Magistrate of the First Class in Sarawak is competent to hear offences under s. 135(1)(d) of the 1867 Act in view of s. 111 of the 1948 Act.

**Held (allowing appeal and ordering case to be heard on merits)**
**Per Sulong Matjeraie JCA delivering the judgment of the court:**

**(1)** While *Shim*'s case relates to s. 58(1) of the Immigration Act 1959/63, *A Juvenile* concerns Juvenile Courts Act 1947. Distinct from *Shim*'s case and *A Juvenile*, the instant case deals specifically with the Customs Act 1967. (para 10)

**(2)** While *Shim*'s case and *A Juvenile* offered invaluable insight into the way as to how the question of jurisdiction is being considered, the development and amendment affecting the relevant provisions of the Customs Act prior to 1 June 1981 were contrastingly different from that of the legal provisions in the said two cases, and the difference is of great significance. (para 11)

**(3)** Section 118 of the Customs Act was explicitly amended to circumvent the need to have a Sessions Court judge try any offence under the Customs Act and to award the full punishment for any such offence. A first Class Magistrate would therefore suffice to hear and dispose off any offence under the Customs Act. Further, there is no specific reference to Sabah and Sarawak being provided in the amended s. 118 of the Customs Act. Thus, although s. 118 of the Customs Act was

amended on 1 July 1978 (*ie*, well before 1981), it would not be caught by s. 111 of the Subordinate Courts Act. (paras 17 & 18)

**(4)** Section 111 of the Subordinate Courts Act is confined only to the Federal Laws passed or made before 1st June 1981 which have in them, in relation to Sabah and Sarawak, specific reference to the Court of Magistrate of the First Class or a District Court or Stipendiary Magistrate or Magistrate of the First Class. In such laws, reference to the Court of Magistrate of the First Class, District Court or Stipendiary Magistrate or Magistrate of the First Class, as the case may be, shall be substituted with a reference to a Sessions Court. (para 19)

**(5)** On a plain and literal reading of s. 118 of the Customs Act, the intention of Parliament is clear in that the Magistrate of the First Class in Sarawak shall have the jurisdiction to try an offence under the Customs Act and to award the full punishment for any such offence. In the circumstances, s. 111 of the Subordinate Courts Act does not affect the operation of the Customs Act – and consequently – the learned First Class Magistrate who heard the customs offence under appeal was empowered to hear it and to award the full punishment for it. (paras 20 & 21)

**(6)** The orders as were made by the learned Judicial Commissioner are set aside. As the merits of this case had not been considered by the learned Judicial Commissioner, the matter is remitted back to the High Court for hearing and for his consideration on the merits of the case. (para 22)

***Bahasa Malaysia*** *Translation Of Headnotes*

Responden telah dituduh di Mahkamah Majisteret (Kelas Satu) Kuching, Sarawak dengan kesalahan di bawah s. 135(1)(d) Akta Kastam 1967 dan setelah disabit, telah dijatuhkan hukuman denda RM10,000 jika tidak bayar lima bulan penjara. Atas rayuan, yang arif Pesuruhjaya Kehakiman, tanpa melihat kepada merit rayuan, telah memilih untuk meneliti keputusan-keputusan di dalam *Shim Tshun Fatt v. PP* ('kes *Shim*') dan *A Juvenile v. PP ('A Juvenile')*, dan, dengan menerimapakai ratio kes terdahulu, telah memutuskan bahawa perbicaraan merupakan suatu nulliti oleh kerana yang arif

Majisteret tiada bidangkuasa untuk mendengar kes berdasarkan peruntukan "sebarang rujukan kepada sebuah Mahkamah Majisteret Kelas Pertama atau Mahkamah Daerah hendaklah diganti dengan rujukan kepada sebuah Mahkamah Sesyen …" yang terdapat di dalam s. 111 Akta Mahkamah Rendah 1948 (dipakai kepada Sarawak pada 1 Jun 1981). Yang arif Pesuruhjaya Kehakiman, dengan itu, telah mengenepikan sabitan dan hukuman dan memerintahkan supaya denda yang telah dibayar dikembalikan. Fakta bagaimanapun menunjukkan bahawa, berkuatkuasa 1 Julai 1978, s. 118 Akta Kastam telah dipinda oleh badan perundangan, berakibat, sementara versi lama memberikan bidangkuasa untuk membicarakan kesalahan di bawah Akta Kastam kepada "sebuah Mahkamah Sesyen di Tanah Melayu atau sebuah Mahkamah Majisteret Kelas Pertama Sabah dan Sarawak …" – s. 118 yang baru telah membuang sama sekali ungkapan "sebuah Mahkamah Sesyen di Tanah Melayu atau sebuah Mahkamah Majisteret Kelas Satu Sabah dan Sarawak" dan menggantikannya dengan ungkapan "sebuah Mahkamah Majisteret Kelas Pertama …". Atas kedudukan ini, dalam rayuan oleh Pendakwa Raya di sini, berbangkit persoalan sama ada versi terpinda s. 118 Akta Kastam di atas telah dirangkumi oleh s. 111 Akta Mahkamah Rendah 1948 ('Akta Mahkamah Rendah') – atau, dalam ertikata lain – sama ada sebuah Mahkamah Majisteret Kelas Pertama di Sarawak berkompeten untuk mendengar kesalahan-kesalahan di bawah s. 135(1)(a) Akta Kastam mengambilkira s. 111 Akta Mahkamah Rendah.

**Diputuskan (membenarkan rayuan dan memerintahkan perbicaraan di atas merit)**

**Oleh Sulong Matjeraie HMR menyampaikan penghakiman mahkamah:**

**(1)** Sementara kes *Shim* berkaitan dengan s. 58(1) Akta Imigresen 1959/63, *A Juvenile* adalah berhubung dengan Akta Mahkamah Juvana 1947. Berbeza dengan kes *Shim* dan *A Juvenile*, kes semasa adalah khusus mengenai Akta Kastam 1967.

**(2)** Sementara kes *Shim* dan *A Juvenile* memberi panduan yang tidak ternilai mengenai cara bagaimana sesuatu persoalan bidangkuasa harus ditangani, perkembangan dan pindaan kepada peruntukan-peruntukan relevan Akta Kastam sebelum 1 Jun

1981 adalah berbeza secara amat ketara berbanding peruntukan undang-undang di dalam kedua-dua kes tersebut, dan perbezaan-perbezaan tersebut adalah besar signifikannya

**(3)** Seksyen 118 Akta Kastam secara jelas telah dipinda untuk memintas keperluan hanya seorang hakim Mahkamah Sesyen boleh membicarakan mana-mana kesalahan di bawah Akta Kastam dan mengawardkan hukuman penuh kesalahan sedemikian. Seorang Majisteret Kelas Pertama dengan itu adalah memadai untuk mendengar dan melupuskan mana-mana kesalahan di bawah Akta Kastam. Selain itu, tiada rujukan khusus kepada Sabah dan Sarawak diperuntukkan di dalam s. 118 Akta Kastam yang dipinda. Oleh itu, walaupun s. 118 Akta Kastam telah dipinda pada 1 Julai 1978 (iaitu lama sebelum tahun 1981), ia tidak tertakluk kepada s. 111 Akta Mahkamah Rendah.

**(4)** Seksyen 111 Akta Mahkamah Rendah hanya terhad kepada Undang-Undang Persekutuan yang diluluskan atau diperbuat sebelum 1 Jun 1981 yang terkandung di dalamnya, berhubung dengan Sabah dan Sarawak, rujukan khusus kepada Mahkamah Majisteret Kelas Pertama atau Mahkamah Daerah atau Majisteret Stipendiari atau Majisteret Kelas Pertama. Dalam undang-undang sedemikian, rujukan kepada sebuah Mahkamah Majisteret Kelas Pertama, Mahkamah Daerah atau Majisteret Stipendiari atau Majisteret Kelas Pertama, sepertimana halnya, hendaklah diganti dengan rujukan kepada Mahkamah Sesyen.

**(5)** Berdasarkan pembacaan biasa dan hurufiah s. 118 Akta Kastam, niat Parlimen adalah jelas iaitu bahawa Majisteret Kelas Pertama di Sarawak adalah berbidangkuasa untuk mengadili kesalahan di bawah Akta Kastam dan menjatuhkan hukuman yang sepenuhnya bagi kesalahan tersebut. Oleh hal yang demikian, s. 111 Akta Mahkamah Rendah tidak menjejaskan operasi Akta Kastam – dan berikutnya – yang arif Majisteret Kelas Pertama yang mendengar kesalahan kastam yang dirayui adalah berkuasa untuk mendengarnya dan seterusnya menjatuhkan hukuman sepenuhnya bagi kesalahan itu.

A **(6)** Perintah-perintah sepertimana yang dibuat oleh Pesuruhjaya Kehakiman adalah diketepikan. Oleh kerana merit kes ini tidak pertimbang oleh Pesuruhjaya Kehakiman, maka kes ini dikembalikan ke Mahkamah Tinggi untuk pendengaran dan untuk pertimbangan meritnya oleh Pesuruhjaya Kehakiman.

B

**Case(s) referred to:**
*Shim Tshun Fatt v. PP [2001] 1 CLJ 154 HC* ***(refd)***
*A Juvenile v. PP [2003] 1 CLJ 171 HC* ***(refd)***

**Legislation referred to:**
C Customs Act 1967, ss. 118, 135(1)(d)
Immigration Act 1959/1963, s. 58(1)(b)
Subordinate Courts Act 1948, s. 111

*For the appellant - Awang Armadajaya Awang Mahmud DPP*
*For the respondent - John Shek; M/s John Shek, Sigar, Wei Yee & Co*

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*[Appeal from High Court, Kuching; Criminal Appeal No: 41-33-2005 III]*

*[Editor's note: For the High Court judgment, please see Chai Mei Lian v. PP [2006] 2 CLJ 941]*

E *Reported by Wan Sharif Wan Ahmad*

## JUDGMENT

F **Sulong Matjeraie JCA:**

**[1]** This appeal emanates from the decision of the learned Judicial Commissioner in setting aside the conviction and sentence imposed against the respondent and the refund of fine paid. This was done after the learned Judicial Commissioner made a finding that the court of a Magistrate of the First Class which heard the charge under s. 135(1)(d) of the Customs Act 1967 had no jurisdiction to hear the case and as such the trial was a nullity.

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**[2]** The brief facts are as follows. The respondent was charged in the Magistrate Court under s. 135(1)(d) of the Customs Act 1967 and upon conviction, was ordered to pay a fine of RM10,000 in default five months imprisonment. The charge preferred against the respondent was:

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That you Chai Mei Lian at about 11.15 am on the 2.4.1993 at Sin Khit Miaw, No. 196, Tapah Village, 22nd Mile Kuching, Sarawak were knowingly concerned in possession of unaccustomed goods to wit 41 cts x 20 pkts x 10 sticks Dajarum Filter Deluxe Cigarettes (11.89 kgs) on which Customs Duties leviable by law amounting to RM1,926.18 had not been proved to have been paid and thereby committed an offence under section 135(1)(d) of the Customs Act, 1967 and punishable under section 135(1)(i) of the same.

**[3]** When the appeal came before the learned Judicial Commissioner on 12 December 2005, it would appear that both the learned DPP Miss Yong Leou Shin and learned counsel Mr. John Shek were referred to two cases, namely *Shim Tshun Fatt v. Public Prosecutor* [2001] 1 CLJ 154 (hereinafter referred to as the "*Shim*'s case") and *A Juvenile v. Public Prosecutor* [2003] 1 CLJ 171 (hereinafter referred to as "*A Juvenile* case"). They were requested to submit on the question whether or not a court of a Magistrate of the First Class in Sarawak has the jurisdiction to hear offences under s. 135(1)(d) of the Customs Act 1967 in view of s. 111 of the Subordinate Courts Act 1948.

**[4]** Though that point was not raised in the petition of appeal, the learned Judicial Commissioner found it fit to address on this issue of jurisdiction, which in law necessitates his immediate attention and expeditious disposal. Obviously the merits or otherwise of the appeal were never considered.

**[5]** After hearing the submissions of both counsel and after "having read both learned judgments (of *Shim*'s case and *A Juvenile* case) more than a few times", the learned Judicial Commissioner adopted the reasoning in the judgment in *Shim*'s case. Consequently, it was his finding that the court of a Magistrate of the First Class which heard the charge preferred against the respondent had no jurisdiction to hear it and declared the trial a nullity. Hence the conviction and sentence imposed against the respondent was set aside and the fine paid ordered to be refunded.

**[6]** The Public Prosecutor appealed to us.

**[7]** Before us, the learned counsel for the respondent chose to ignore completely the question of jurisdiction but argued on the merit only. Clearly therefore his tenuous arguments had to be disregarded for being irrelevant and out of line.

**[8]** The learned Deputy Public Prosecutor, Awang Armadajaya, on the other hand eloquently articulated the need to urgently purge all doubts as to whether a Magistrate of the First Class in Sarawak is competent to hear offences under s. 135(1)(d) of the Customs Act 1967 in view of s. 111 of the Subordinate Courts Act 1948.

**[9]** The learned Judicial Commissioner in his judgment considered the pertinent issue of jurisdiction and went at length to deliberate on *Shim*'s case and the case of *A Juvenile*.

**[10]** While *Shim*'s case relates to s. 58(1)(b) of the Immigration Act 1959/1963, the case of *A Juvenile* concerns Juvenile Courts Act 1947. Distinct from *Shim*'s case and the case of *A Juvenile*, this instant case deals specifically with the Customs Act 1967.

**[11]** Undoubtedly *Shim*'s case and the case of A Juvenile offer invaluable insight into the way as to how the question of jurisdiction was being considered by the respective learned High Court Judges. The development and amendment affecting the relevant provision of Customs Act 1967 prior to 1 June 1981 are contrastingly different from that of the relevant legal provisions in the said two cases, and the difference is of great significance.

**[12]** It is stated in the preamble of the Customs Act 1967 that it shall relate to Customs and deals only with Customs matters.

**[13]** 1 June 1981 was the cut off point created by s. 111 of the Subordinate Courts Act 1948 which was extended to Sarawak on said date by virtue of the Subordinate Courts Act (Extension Order) 1980. Section 111 of the Subordinate Courts Act 1948 states as follows:

> Where in any written law passed or made before the commencement of the extension of this Act to Sabah and Sarawak, there is, **in relation to Sabah and Sarawak**:
>
> (a) a reference to the Court of a Magistrate of the First Class or a District Court there shall be substituted a reference to a Sessions Court;
>
> (b) a reference to the Court of:
>
> (i) a Magistrate of the Second Class, a Police Court or Court of Small Causes;

(ii) a Magistrate of the Third Class or a Petty Court, there shall be substituted a reference to a Magistrates' Court;

(c) a reference to a Stipendiary Magistrate or a Magistrate of the First Class there shall be substituted a reference to a Sessions Court Judge; and

(d) a reference to a Magistrate of the Second Class or a Magistrate of the Third Class there shall be substituted a reference to a Second Class Magistrate. (emphasis added).

**[14]** Prior to 1 July 1978 s. 118 of the Customs Act 1967 provides:

> Notwithstanding the provisions of any written law to the contrary, **a Sessions Court in the State of Malaya or a Court of Magistrate of the First Class of Sabah and Sarawak** shall have jurisdiction to try any offence under this Act and to award the full punishment for such offence. (emphasis added)

**[15]** On 1 July 1978, in their wisdom Parliament replaced s. 118 of the Customs Act 1967 with a new s. 118. The difference between the new s. 118 and the old one is easily discernable. The new section reads:

> Notwithstanding the provisions of any written law to the contrary, **a court of Magistrate of the First Class** shall have the jurisdiction to try any offence under this Act and to award the full punishment for any such offence. (emphasis added).

**[16]** The unamended s. 118 the Customs Act 1967 contains a phrase "… a Sessions Court in the State of Malaya or a Court of Magistrate of the First Class of Sabah and Sarawak …" However, this phrase was deleted altogether in the amended s. 118 of the Customs Act 1967 and Parliament replaced it with the phrase "… a court of Magistrate of the First Class ..."

**[17]** It can therefore be seen that s. 118 of the Customs Act 1967 was explicitly amended to circumvent the need to have a Sessions Court Judge try any offence under the Act and to award the full punishment for any such offence. A First Class Magistrate would therefore suffice to hear and dispose off any offence under the Customs Act 1967.

**[18]** Further, it is clear that there is no specific reference to Sabah and Sarawak being provided in the amended s. 118 of the Customs Act 1967. Thus, although s. 118 of the Customs Act 1967, was amended on 1 July 1978 (ie, well before 1 June 1981), it would not be caught by s. 111 of the Subordinate Courts Act 1948.

**[19]** We are of the view that s. 111 of the Subordinate Courts Act 1948 is confined only to the Federal Laws passed or made before 1 June 1981 which have in them, in relation to Sabah & Sarawak specific reference to the Court of Magistrate of the First Class or a District Court or Stipendiary Magistrate or Magistrate of the First Class. In such laws, reference to the Court of Magistrate of the First Class, District Court or Stipendiary Magistrate or Magistrate of the First Class as the case may be, shall be substituted with a reference to a Sessions Court.

**[20]** In the light of numerous authorities on the cannon of statutory construction, we are of the view that on the plain and literal reading of s. 118 of the Customs Act 1967, the intention of Parliament is clear and unambiguous in that Magistrate of the First Class in Sarawak shall have the jurisdiction to try any offence under the Customs Act 1967. Such Magistrate shall also have the power to award the full punishment for any such offence. Such being the intention of Parliament, it is the sacred responsibility of the Court to give effect to it.

**[21]** Therefore we conclude that s. 111 of the Subordinate Courts Act 1948 does not affect the operation of the Customs Act 1967. Hence Magistrates of the First Class in Sarawak can try offences under the said Act. The learned First Class Magistrate who heard the custom offence under appeal was indeed empowered to hear it and to award the full punishment for it.

**[22]** In the upshot, the orders made by the learned Judicial Commissioner are hereby set aside and as the merits of this case had not be considered by the learned Judicial Commissioner, this matter is remitted back to the High Court for hearing and for his consideration on the merits of the case.